

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	Chapter 11
)	
METROPOLITAN BREWING, LLC,)	Case No. 23-13209
)	
Debtor.)	Honorable Deborah L. Thorne

NOTICE OF MOTION

TO: See attached list

PLEASE TAKE NOTICE that on October 5th, 2023, at 3:00 p.m. (prevailing Central Time), I will appear by Zoom, or in person, before the Honorable Deborah L. Thorne, United States Bankruptcy Judge, or any judge sitting in for such judge, in Courtroom 682 at 219 South Dearborn Street, Chicago Illinois 60604 and present the ***Emergency Motion of Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Pre-Petition Priority Wages, Benefits, and Obligations to Employees (and to Continue Same, and Make Ordinary Course Deductions from Employee Paychecks, Post-Petition); and (b) Approving Related Relief*** (the “Motion”), a copy of which is attached.

To appear by Zoom using the internet, go to this link: <https://www.zoomgov.com/>. Then enter the meeting ID and passcode.

To appear by Zoom using a telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and passcode.

Meeting ID and passcode. The meeting ID for this hearing is 160 9362 1728, no password is required. The meeting ID can also be found on the judge’s page on the court’s web site.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without calling it.

Dated: October 3, 2023

Respectfully submitted,

/s/ Matthew E. McClintock
GOLDSTEIN & MCCLINTOCK LLP
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Debtor-in-Possession*

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	Chapter 11
)	
METROPOLITAN BREWING, LLC,)	Case No. 23-13209
)	
Debtor.)	Honorable
)	Deborah L. Thorne

EMERGENCY MOTION FOR ENTRY OF AN ORDER: (A) AUTHORIZING THE DEBTOR TO PAY AND HONOR PRIORITY PRE-PETITION WAGES, BENEFITS, AND OBLIGATIONS (AND TO CONTINUE SAME, AND MAKE ORDINARY COURSE DEDUCTIONS FROM EMPLOYEE PAYCHECKS, POST-PETITION); AND (B) APPROVING RELATED RELIEF

Metropolitan Brewing, LLC (the “Debtor”), by and through its attorneys, Goldstein & McClintock LLP, hereby moves (this “Motion”) for entry of an order (a) authorizing the Debtor to pay and honor pre-petition priority wages, benefits, and obligations to employees (and to continue same, and make ordinary course deductions from employee paychecks, post-petition); and (b) approving related relief. In support of the Motion the Debtor respectfully states as follows:

Jurisdiction & Venue

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2).
2. Venue of these cases and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3. Metropolitan is a well-known and well-loved brewery located in a large commercial property (the “Property”) overlooking the North Branch of the Chicago River at 3057 N. Rockwell Street. Founded by Tracy and Doug Hurst in 2007, the brewery focuses on brewing German-style beers including well-known brands such as its “Krankshaft Kölsch” and “Flywheel Pilsner.”

4. On October 3, 2023 (the “*Petition Date*”), the Debtor filed a voluntary Petition for relief under subchapter V of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “*Bankruptcy Code*”), in the United States Bankruptcy Court for the Northern District of Illinois (the “*Bankruptcy Court*”), thereby commencing the above-captioned bankruptcy case (this “*Chapter 11 Case*”).

5. Additional background on the Debtor and the circumstances of the Chapter 11 Case can be found in the declaration of Tracy Hurst filed contemporaneously herewith and is incorporated herein by reference.

6. Doug and Tracy Hurst, the two founders, remain full-time employees. Doug is Metropolitan’s head brewer, and Tracy is President and self-titled “Image Mistress” (in charge of everything from overseeing the finances to the brewery’s social media and marketing campaigns). Including the two of them, the Debtor employs a total of 22 people as of the Petition Date. Eight are full-time employees (*e.g.*, a comptroller, cellar manager, taproom general manager, etc.). Full-time employees are paid in advance (so there should be no pre-petition amounts owed to these employees). The others are part-time employees who work in the Debtor’s taproom. These employees are paid two weeks in arrears and were last paid on September 29, 2023. As of the Petition Date, the Debtor believes that ***total*** pre-petition wages owed to employees were less than \$10,000.

7. In addition to their bi-weekly payroll, the part-time employees in the Debtor’s taproom also receive (and primarily rely on) pooled tip revenue. The Debtor tracks the amount of tips paid by customers (both in cash and by credit card), collects the tip money for the benefit of the eligible employees, and each night a manager pays out the nightly tip revenue to the Debtor’s employees in cash (either with cash on hand or, if insufficient – because most tips are paid on

credit card – cash from the Debtor’s operating account. As the tip revenue is not an asset of the Debtor, and the Debtor will not owe any pre-petition tip revenue to employees as of the Petition Date, the Debtor will be continuing to collect and pass through tip revenue in the ordinary course of business each day post-petition. Not doing so would almost certainly have dire consequences for the business, as the part-time employees rely on their nightly tip revenue to get by.

8. The employees, especially the part-time employees, rely on their week-to-week earnings. For the Debtor to continue its business operations in bankruptcy, the continuing employment and contribution from these employees is critical. If these employees are not paid, they will likely and promptly seek employment elsewhere. This would cause irreparable harm to the Debtor and to its ability to file and effectuate a plan and maximize value for its creditors.

9. The Company also pays for individual healthcare coverage for its full-time employees (less a \$25 per paycheck contribution from most participating employees) and matches IRA contributions up to 3% pre-tax. The Debtor was generally current on its obligations with respect to these benefit programs and does not believe that material amounts are owed as of the Petition Date (certainly nothing outside of ordinary course obligations). The Debtor is requesting authority to continue all benefit programs, including paying pre-petition amounts owed, to the extent applicable, in the ordinary course of business.

10. In the ordinary course, the Debtor also makes certain deductions from employee paychecks, including, without limitation, for IRA contributions and support obligations.

Motion

11. The Debtor further requests that the Court (a) authorize and direct all applicable financial institutions (the “*Banks*”) to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the foregoing to the extent directed by the

Debtor in accordance with this Motion and to the extent the Debtor has sufficient funds standing to its credit with such Bank, whether such checks were presented or electronic requests were submitted before or after the Petition Date, and (b) authorize all Banks to rely on the Debtor's designation of any particular check or electronic payment request as appropriate pursuant to this Motion, without any duty of further inquiry, and without liability for following the Debtor's instructions.

12. The Debtor has the funds in its pre-petition bank accounts necessary to make the payments requested herein. The payments requested herein qualify as Priorities under 11 USC § 507(A)(4).

13. The Debtor also respectfully requests that the Court order banks and financial institutions to honor checks and electronic payments related to the relief granted herein.

Need for Emergency Relief

14. The Debtor has to fund payroll by no later than October 12, 2023 to avoid irreparable harm to the business and estate.

Reservation of Rights

15. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtor; (ii) a waiver of the Debtor's or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtor; (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder; or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtor and any third party under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the

Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtor's rights to dispute such claim subsequently.

Bankruptcy Rules 4001(a)(3), 6004(a), and 6004(h)

16. To implement the foregoing successfully, the Debtor requests that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances and waive, to the extent applicable, the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). The relief requested herein is necessary to avoid immediate and irreparable harm to the Debtor. Accordingly, ample cause exists to justify finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h) (to the extent applicable).

Notice

17. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the Northern District of Illinois; (ii) each of the Debtor's twenty (20) largest unsecured creditors; (iii) entities that have filed UCC-1 financing statements against the Debtor; and (iv) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "*Notice Parties*"). In addition, in light of the timing of the emergency hearing, the Debtor will be providing additional notice to creditors by fax and email where possible (the Debtor will file an updated certificate of service to reflect same). The Debtor respectfully submits that no further notice is required. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: October 3, 2023

Respectfully submitted,

By: /s/ Matthew E. McClintock

Matthew E. McClintock, Esq. (Atty. No. 6280574)

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Proposed Counsel to the Debtor and Debtor-In-Possession

CERTIFICATE OF SERVICE

I, Matthew E. McClintock, the undersigned attorney, hereby certify that on October 3, 2019, I caused a copy of the *Notice of Motion* and *Emergency Motion of Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Pre-Petition Priority Wages, Benefits, and Obligations to Employees (and to Continue Same, and Make Ordinary Course Deductions from Employee Paychecks, Post-Petition); and (b) Approving Related Relief.* to be served via first class U.S. Mail as indicated below.

/s/ Matthew E. McClintock

SERVICE LIST

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Illinois Department of Revenue PO BOX 19005 Springfield, IL 62794	U.S. Small Business Administration 2 North Street, Suite 320 Birmingham, AL 35203	American Welding & Gas , Inc. 6944 South Pulaski Ave. Chicago, IL 60632
Cook County Treasurer 118 North Clark Street Room 112 Chicago, IL 60602	Rockwell Properties, LLC c/o Prairie Management & Development, Inc. 333 N. Michigan Ave., Suite 1700 Chicago, IL 60601-3981	Brewers Supply Group 800 West 1 st Ave. Shakopee, MN 55379
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